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Defendants.

JUDGE

I. BACKGROUND

B. The Settling Defendants do not admit that they sent, transported or arranged for disposal of any hazardous substances at the Site and do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint. The Settling Federal Agency does not admit that it sent, transported or arranged for disposal of any hazardous substances at

1 the Site and does not admit any liability arising out of the transactions or occurrences alleged in
2 any counterclaim asserted, or which could be asserted, by Settling Defendants.

3 C. The United States and Settling Defendants agree, and this Court by entering this
4 Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith,
5 that settlement of this matter will avoid prolonged and complicated litigation between the
6 Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

7 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
8 ADJUDGED, AND DECREED:

9 **II. JURISDICTION**

10 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
11 §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over
12 Settling Defendants. Solely for the purposes of this Consent Decree and the underlying
13 Complaint, Settling Defendants waive all objections and defenses that they may have to
14 jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the
15 terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent
16 Decree.

17 **III. PARTIES BOUND**

18 2. This Consent Decree is binding upon the United States, and upon Settling Defendants
19 and their successors and assigns. Any change in ownership or corporate or other legal status
20 including, but not limited to, any transfer of assets or real or personal property, shall in no way
21 alter the status or responsibilities of Settling Defendants under this Consent Decree.

22 **IV. DEFINITIONS**

23 3. Unless otherwise expressly provided herein, terms used in this Consent Decree that
24 are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings
25 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in
26 this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

27 a. "CERCLA" shall mean the Comprehensive Environmental Response,
28 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

1 b. "Complaint" shall mean the pleading United States v. Aerove-Pacific
2 Company, et al., filed concurrently with this Consent Decree and bearing the same Civil Action
3 Number.

4 c. "Consent Decree" shall mean this Consent Decree and all appendices attached
5 hereto.

6 d. "Day" shall mean a calendar day. In computing any period of time under this
7 Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the
8 period shall run until the close of business of the next working day.

9 e. "DOJ" shall mean the United States Department of Justice and any successor
10 departments, agencies or instrumentalities of the United States.

11 f. "EPA" shall mean the United States Environmental Protection Agency and any
12 successor departments, agencies or instrumentalities of the United States.

13 g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance
14 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

15 h. "Paragraph" shall mean a portion of this Consent Decree identified by an
16 Arabic numeral or an upper or lower case letter.

17 i. "Parties" shall mean the United States and Settling Defendants.

18 j. "Plaintiff" shall mean the United States.

19 k. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*
20 (also known as the Resource Conservation and Recovery Act).

21 l. "Record of Decision 1" or "ROD 1" shall mean the EPA Record of Decision
22 relating to Operable Unit 2 at the Site signed on September 21, 1988, by the Regional
23 Administrator, EPA Region IX, and all attachments thereto.

24 m. "Record of Decision 2" or "ROD 2" shall mean the EPA Record of Decision
25 relating to Operable Unit 1 at the Site signed on August 26, 1993, by the Regional
26 Administrator, EPA Region IX, and all attachments thereto.

27 n. "Remedial Action" shall mean those activities, except for Operation and
28 Maintenance, to be undertaken to implement a ROD.

1
2 o. "Section" shall mean a portion of this Consent Decree identified by a Roman
3 numeral.

4 p. "Settling Defendants" shall mean Aervoe Industries, Inc., a Nevada
5 corporation, Applied Tinting Systems, Inc., a California Corporation, Aervoe Pacific Company,
6 a California Corporation, Aervoe Pacific Company, a Nevada Corporation, Pacific Aerosol, Inc.,
7 a California corporation, Aervoe Chemical Company, a California corporation, D.A. Stuart
8 Company (f/k/a Stuart-Ironsides, Inc.), Far Best Corporation, Ford Motor Company, Ford
9 Electronics and Refrigeration, LLC, General Mills, Inc., Golden Gate Petroleum Co., Bay Area
10 Petroleum Co., Bay Area/Diablo Petroleum Co., Bay Area Holdener Petroleum Co., Holdener
11 Petroleum Co., K-M Industries Holding Company, Inc., Kelly-Moore Paint Company, Inc., Paco
12 Textures Corporation, Chem-Guard Products, Inc. Pennzoil-Quaker State Company, Pennzoil-
13 Quaker State Company dba SOPUS Products, Pennzoil Co., Salz Leathers, Inc., A.K. Salz Co.,
14 Sunsweet Growers Inc., Textron Inc, Spencer-Kellogg, a division of Textron Inc., Kelly-
15 Pickering Chemical Corporation, and each of their respective corporate successors and assigns.

16 q. "Settling Federal Agency" shall mean the United States Department of the
17 Navy.

18 r. "Site" shall mean the Lorentz facility Superfund site, encompassing
19 approximately 6.72 acres, located at 1515 South Tenth Street in San Jose, Santa Clara County,
20 California, and generally shown on the map included in Appendix A. Site shall include all areas
21 where contamination emanating or migrating from the Lorentz facility has come to be located.

22 s. "United States" shall mean the United States of America, including its
23 departments, agencies and instrumentalities, including, without limitation, EPA and the
24 Department of the Navy.

25 **V. STATEMENT OF PURPOSE**

26 4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling
27 Defendants and the Settling Federal Agency , without any admission of liability, to resolve their
28 alleged liability for the Site, as provided by Sections VI and Section VIII, and subject to the

1 Reservations of Rights by United States in Section IX.

2 **VI. SETTLEMENT PAYMENT**

3 5. Within 15 business days after Settling Defendants receive notice from the United
4 States that this Consent Decree has been lodged, Settling Defendants shall deposit \$3,016,000,
5 in accordance with the amounts set forth in Exhibit B, into an escrow account, which Settling
6 Defendants shall establish, bearing interest on commercially reasonable terms, in a federally-
7 chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court,
8 and the time for any appeal of that decision has run or if the Court's denial of entry is upheld
9 on appeal, the monies placed in escrow, together with accrued interest thereon, shall be
10 returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling
11 Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to
12 EPA in accordance with Paragraphs 6 and 7 below.

13 6. Payment by the Settling Defendants from the Escrow Account shall be transferred by
14 FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in
15 accordance with EFT instructions. These instructions shall be provided to Settling Defendants,
16 following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's
17 Office in the Northern District of California .

18 7. At the time of payment to the U.S. Department of Justice account pursuant to
19 Paragraph 6, Settling Defendants shall also send notice that payment has been made to EPA and
20 DOJ in accordance with Section XIII (Notices and Submissions) . Such notice shall reference
21 the EPA Region and Site-Spill ID Number 0989, DOJ Case Number 90-11-2-467/3, and the
22 Civil Action Number.

23 8.0 The total amount to be paid pursuant to Paragraph 5 by Settling Defendants shall be
24 deposited by the United States in the Lorentz Special Account within the EPA Hazardous
25 Substance Superfund to be retained and used to conduct or finance response actions at or in
26 connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance
27 Superfund.

28 8.1. As soon as reasonably practicable after the effective date of this Consent Decree,

1 and consistent with Paragraph 8.1(a)(ii), the United States, on behalf of the Settling Federal
2 Agency, shall:

3 [a.] (i) Pay \$1,184,000 into the Lorentz Special Account within the EPA
4 Hazardous Substance Superfund to be retained and used to conduct or finance response actions
5 at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance
6 Superfund.

7 [a.](ii.) If the payment to the EPA required by this Paragraph 8.1[a][i] is not
8 made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise
9 any issues relating to payment to the appropriate DOJ Assistant Section Chief for the
10 Environmental Defense Section. In any event, if this payment is not made within 120 days after
11 the date of entry of this Consent Decree, EPA and DOJ have agreed to resolve the issue within
12 30 days in accordance with a letter agreement dated December 28, 1998.

13 8.2. The Parties to this Consent Decree recognize and acknowledge that the payment
14 obligations of the Settling Federal Agency under this Consent Decree can only be paid from
15 appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be
16 interpreted or construed as a commitment or requirement that any Settling Federal Agency
17 obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
18 other applicable provision of law.

19 **VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

20 9. Interest on Late Payments. If the Settling Defendants fail to make any payment under
21 Paragraph 5 by the required due date, interest shall continue to accrue on the unpaid balance
22 through the date of payment. The rate of interest shall equal the rate of interest beared on the
23 Escrow Account.

24 10. Stipulated Penalty.

25 a. If any amounts due under Paragraph 5 are not paid by the required due date,
26 the Settling Defendants failing to pay shall be in violation of this Consent Decree and shall pay,
27 as a stipulated penalty, in addition to the interest required by Paragraph 9, \$5,000 per day that
28 payment is late.

1 b. Stipulated penalties are due and payable within 30 days of the date of the
2 demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall
3 be identified as "stipulated penalties" and shall be made by certified or cashier's check made
4 payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the
5 check, shall reference the name and address of the party(ies) making payment, the Site name, the
6 EPA Region and Site Spill ID Number 0989, and DOJ Case Number 90-11-2-467/3, and the
7 Civil Action Number. Settling Defendants shall send the check (and any accompanying letter)
8 to:

9 EPA Superfund
10 Mellon Bank EPA - Region 9
11 Attn: Superfund Accounting
 P.O. Box 360863M
 Pittsburgh, PA 15251

12 c. At the time of each payment of a Stipulated Penalty, Settling Defendants shall
13 also send notice that such payment has been made to EPA and DOJ in accordance with Section
14 XIII (Notices and Submissions) . Such notice shall reference the EPA Region and Site/Spill Id
15 Number 0989, DOJ Case Number 90-11-2-467/3, and the Civil Action Number.

16 d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA
17 has notified Settling Defendants of the violation or made a demand for payment, but need only
18 be paid upon demand. All penalties shall begin to accrue on the day after payment is due and
19 shall continue to accrue through the date of payment. Nothing herein shall prevent the
20 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

21 11. If the United States brings an action to enforce this Consent Decree, and the United
22 States prevails in such action, the Settling Defendant[s] against whom the enforcement action is
23 brought shall reimburse the United States for all costs of such action, including, but not limited
24 to, costs of attorney time.

25 12. Payments made under this Section shall be in addition to any other remedies or
26 sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the
27 requirements of this Consent Decree.

28 13. The obligations of Settling Defendants to pay amounts owed the United States under

1 Paragraph 5 of this Consent Decree are joint and several. In the event of the failure of any one
2 or more Settling Defendants to make the payments required under Paragraph 5 of this Consent
3 Decree, the remaining Settling Defendants shall be responsible for such payments.

4 14. Notwithstanding any other provision of this Section, the United States may, in its
5 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
6 accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
7 Settling Defendants from payment as required by Section VI or from performance of any other
8 requirements of this Consent Decree.

9 **VIII. COVENANT BY PLAINTIFF**

10 15. Covenant Not to Sue Settling Defendants by United States. Except as specifically
11 provided in Section IX (Reservation of Rights by United States), the United States covenants not
12 to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and
13 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or pursuant to Section 7003 of the Resource
14 Conservation and Recovery Act, 42 U.S.C. § 6973, with regard to the Site. This covenant not to
15 sue shall take effect upon receipt by EPA of all payments from Settling Defendants required by
16 Section VI (Settlement Payment) and any amount due under Section VII (Failure to Comply with
17 Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by
18 each Settling Defendant of its obligations under this Consent Decree. This covenant not to sue
19 extends only to Settling Defendants and does not extend to any other person.

20 15.1. Covenant for Settling Federal Agency by EPA. Except as specifically provided in
21 Section IX (Reservation of Rights by United States), EPA covenants not to take administrative
22 action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA, 42
23 U.S.C. §§ 9606 and 9607(a), with regard to the Site. This covenant shall take effect upon receipt
24 by EPA of all payments required by Paragraph 8.1 of Section VI (Settlement Payment). This
25 covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their
26 obligations under this Consent Decree. This covenant extends only to the Settling Federal
27 Agency and does not extend to any other person.

1 **IX. RESERVATION OF RIGHTS BY UNITED STATES**

2 16. General Reservations of Rights by United States. The United States reserves, and
3 this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to
4 all matters not expressly included within the Covenant by United States in Paragraph 15 and the
5 Covenant by EPA in Paragraph 15.1. Notwithstanding any other provision of this Consent
6 Decree, the United States reserves all rights against Settling Defendants, and EPA and the
7 federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all
8 rights against the Settling Federal Agency, with respect to:

9 a. liability for failure of Settling Defendants or the Settling Federal Agency to
10 meet a requirement of this Agreement;

11 b. criminal liability;

12 c. liability for damages for injury to, destruction of, or loss of natural resources,
13 and for the costs of any natural resource damage assessments;

14 d. liability, based upon Settling Defendants' or the Settling Federal Agency's
15 ownership or operation of the Site, or upon Settling Defendants' or the Settling Federal Agency's
16 transportation, treatment, storage, or disposal, or the arrangement for the transportation,
17 treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with
18 the Site, after signature of this Consent Decree by Settling Defendants or the Settling Federal
19 Agency;

20 e. liability arising from the past, present, or future disposal, release or threat of
21 release of a hazardous substance, pollutant, or contaminant other than at the Site.

22 16.1. Notwithstanding any other provision of this Consent Decree, the United States
23 reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this
24 action or in a new action, or to issue an administrative order seeking to compel Settling
25 Defendants, and EPA reserves the right to issue an administrative order seeking to compel the
26 Settling Federal Agency, (1) to perform response actions relating to the Site or (2) to reimburse
27 the United States for additional costs of response if:
28

1 (i) conditions at the Site, previously unknown to EPA, are discovered, or
2 (ii) information, previously unknown to EPA, is received, in whole or in part,
3 and EPA determines that these previously unknown conditions or information together with any
4 other relevant information indicates that the Remedial Action at issue is not protective of human
5 health or the environment.

6 16.2. For purposes of Paragraph 16.1, the information and the conditions known to EPA
7 regarding the Site shall include all information, data and other conditions known or that
8 reasonably should have been known to EPA at the time of lodging of the Consent Decree.

9 **X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

10 17. Settling Defendants covenant not to sue and agree not to assert any claims or causes
11 of action against the United States, or its contractors or employees, with respect to the Site or
12 this Consent Decree, including but not limited to:

13 a. any direct or indirect claim for reimbursement from the Hazardous Substance
14 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§
15 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

16 b. any claim arising out of response actions at or in connection with the Site,
17 including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the
18 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

19 c. any claim against the United States pursuant to Sections 107 and 113 of
20 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

21 Except as provided in Paragraph 19 (Waiver of Claims Against *De Minimis* Parties) and
22 Paragraph 23 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in
23 the event the United States brings a cause of action or issues an order pursuant to the
24 reservations set forth in Paragraph 16 (c) - (e), Paragraph 16.1, or Paragraph 16.2, but only to the
25 extent that Settling Defendants' claims arise from the same response action, response costs, or
26 damages that the United States is seeking pursuant to the applicable reservation.

27 18. Nothing in this Consent Decree shall be deemed to constitute approval or
28 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or

1 40 C.F.R. § 300.700(d).

2 19. Settling Defendants agree not to assert any claims and to waive all claims or causes
3 of action that they may have for all matters relating to the Site, including for contribution,
4 against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with
5 EPA with respect to the Site as of the effective date of this Consent Decree. This waiver shall not
6 apply with respect to any defense, claim, or cause of action that a Settling Defendant may have
7 against any person if such person asserts a claim or cause of action relating to the Site against
8 such Settling Defendant. In addition, this waiver shall not apply in the event that the United
9 States brings a claim or cause of action against the Settling Defendants relating to liability for
10 damages for injury to, destruction of, or loss of natural resources, and/or for the costs of any
11 natural resource damage assessments.

12 **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

13 20. Except as provided in Paragraph 19 (Waiver of Claims Against *De Minimis*
14 Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant
15 any cause of action to, any person not a Party to this Consent Decree. The preceding
16 sentence shall not be construed to waive or nullify any rights that any person not a
17 signatory to this Decree may have under applicable law. Except as provided in Paragraph
18 19 (Waiver of Claims Against *De Minimis* Parties), the Parties each expressly reserve any
19 and all rights (including, but not limited to, any right to contribution), defenses, claims,
20 demands, and causes of action which each Party may have with respect to any matter,
21 transaction, or occurrence relating in any way to the Site against any person not a Party
22 hereto.

23 21. The Parties agree, and by entering this Consent Decree this Court finds, that
24 Settling Defendants and the Settling Federal Agency are entitled, as of the date of entry of
25 this Consent Decree, to protection from contribution actions or claims as provided by
26 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this
27 Consent Decree. The “matters addressed” in this Consent Decree are all response actions
28 taken or to be taken and all response costs incurred or to be incurred, at or in connection

1 with the Site, by the United States or any other person. The "matters addressed" in this
2 Consent Decree do not include those response costs or response actions as to which the
3 United States has reserved its rights under this Consent Decree (except for claims for
4 failure to comply with this Decree), in the event that the United States asserts rights
5 against Settling Defendants coming within the scope of such reservations.

6 22. Each Settling Defendant agrees that, with respect to any suit or claim for
7 contribution brought by it for matters related to this Consent Decree, it will notify EPA
8 and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each
9 Settling Defendant also agrees that, with respect to any suit or claim for contribution
10 brought against it for matters related to this Consent Decree, it will notify EPA and DOJ
11 in writing within 10 days of service of the complaint or claim upon it. In addition, each
12 Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any
13 Motion for Summary Judgment, and within 10 days of receipt of any order from a court
14 setting a case for trial, for matters related to this Consent Decree.

15 23. In any subsequent administrative or judicial proceeding initiated by the United
16 States for injunctive relief, recovery of response costs, or other relief relating to the Site,
17 Settling Defendants shall not assert, and may not maintain, any defense or claim based
18 upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-
19 splitting, or other defenses based upon any contention that the claims raised by the United
20 States in the subsequent proceeding were or should have been brought in the instant case;
21 provided, however, that nothing in this Paragraph affects the enforceability of the
22 Covenant by Plaintiff set forth in Section VIII.

23 **XII. RETENTION OF RECORDS**

24 24. Until 3 years after the entry of this Consent Decree, each Settling Defendant
25 shall preserve and retain all records, reports, or information (hereinafter referred to as
26 "records") now in its possession or control, or which come into its possession or control,
27 that relate in any manner to response actions taken at the Site or the liability of any person
28 for response actions or response costs at or in connection with the Site, regardless of any

1 corporate retention policy to the contrary.

2 25. After the conclusion of the 3-year document retention period in the preceding
3 paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the
4 destruction of any records, and, upon request by EPA or DOJ, Settling Defendants shall
5 deliver any such records to EPA. Settling Defendants may assert that certain records are
6 privileged under the attorney-client privilege or any other privilege recognized by federal
7 law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the
8 following: 1) the title of the record; 2) the date of the record; 3) the name title, affiliation
9 (e.g., company or firm), and address of the author of the record; 4) the name and title of
10 each addressee and recipient; 5) a description of the subject of the record; and 6) the
11 privilege asserted. If a claim of privilege applies only to a portion of a record, the record
12 shall be provided to EPA in redacted form to mask the privileged information only.

13 Settling Parties shall retain all records that they claim to be privileged until the United
14 States has had a reasonable opportunity to dispute the privilege claim and any such
15 dispute has been resolved in the Settling Parties' favor. However, no records created or
16 generated pursuant to the requirements of this or any other settlement with the United
17 States shall be withheld on the grounds that they are privileged.

18 26. Each Settling Defendant hereby certifies individually that, to the best of its
19 knowledge and belief, after appropriate inquiry, it has not since notification of potential
20 liability by the United States or the State or the filing of suit against it regarding the Site,
21 altered, mutilated, discarded, destroyed or otherwise disposed of any records,
22 information, or reports relating to its potential liability regarding the Site which are the
23 sole record of factual information, except as such documents are destroyed or altered in
24 the ordinary course of Settling Defendants' business and in compliance with State and
25 federal law, and no such records have been destroyed for an improper purpose. Each
26 Settling Defendant represents that the information provided to EPA in response to requests
27 for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e)
28 and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, were believed to be complete

1 as of the time they were submitted.

2 27. The United States acknowledges that the Settling Federal Agency (1) is
3 subject to all applicable Federal record retention laws, regulations, and policies; and (2)
4 has fully complied with any and all EPA requests for information pursuant to Sections
5 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of
6 RCRA, 42 U.S.C. § 6927.

7 **XIII. NOTICES AND SUBMISSIONS**

8 28. Whenever, under the terms of this Consent Decree, notice is required to be
9 given or a document is required to be sent by one party to another, it shall be directed to
10 the individuals at the addresses specified below, and, as to each of the Settling
11 Defendants, to the individual specified by each Settling Defendant as the agent authorized
12 to accept service pursuant to Section XVII, unless those individuals or their successors
13 give notice of a change to the other Parties in writing. Written notice as specified herein
14 shall constitute complete satisfaction of any written notice requirement of the Consent
15 Decree with respect to the United States, EPA, DOJ, the Settling Federal Agency, and
16 Settling Defendants, respectively.

17 As to the United States:

18 As to DOJ:

19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice (DJ # 90-11-2-467/3)
22 P.O. Box 7611
23 Ben Franklin Station
24 Washington, D.C. 20044-7611

25 Matthew A. Fogelson
26 Trial Attorney
27 Environmental Enforcement Section
28 Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-6-16866)
P.O. Box 23986
L'Enfant Plaza Station
Washington, D.C. 20026-3986

1 Michael Semler
2 Trial Attorney
3 Environmental Defense Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 23986
7 L'Enfant Plaza Station
8 Washington, D.C. 20026-3986

9 As to EPA:

10 Ann C. Chan
11 Assistant Regional Counsel
12 Office of Regional Counsel (ORC-3)
13 U.S. EPA, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

16 Terry Burton
17 Remedial Project Manager
18 Superfund Division (SFD-7-4)
19 U.S. EPA, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 William Hanamoto
23 Policy and Management Division – Superfund Accounting
24 U.S. EPA, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 **XIV. RETENTION OF JURISDICTION**

28 29. This Court shall retain jurisdiction over this matter for the purpose of
interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

30. This Consent Decree and its appendix constitute the final, complete and
exclusive agreement and understanding among the Parties with respect to the settlement
embodied in this Consent Decree. The Parties acknowledge that there are no
representations, agreements or understandings relating to the settlement other than those
expressly contained in this Consent Decree. The following appendices are attached to
and incorporated into this Consent Decree: "Appendix A," a map of the Site; and
"Appendix B," a list of the amounts to be paid by each Settling Defendant into the Escrow
Account pursuant to Paragraph 5.

1 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

2 31. This Consent Decree shall be lodged with the Court for a period of not less
3 than 30 days for public notice and comment and for opportunity for a public hearing
4 pursuant to Section 7003(d) of the Resources Conservation and Recovery Act, 42 U.S.C. §
5 6973(d). The United States reserves the right to withdraw or withhold its consent if the
6 comments regarding the Consent Decree disclose facts or considerations which indicate
7 that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants
8 consent to the entry of this Consent Decree without further notice.

9 32. If for any reason this Court should decline to approve this Consent Decree in
10 the form presented, this agreement is voidable at the sole discretion of any party and the
11 terms of the agreement may not be used as evidence in any litigation between the Parties.

12 **XVII. SIGNATORIES/SERVICE**

13 33. Each undersigned representative of a Settling Defendant to this Consent
14 Decree and the Associate Attorney General of the United States Department of Justice
15 certifies that he or she is authorized to enter into the terms and conditions of this Consent
16 Decree and to execute and bind legally such Party to this document.

17 34. Each Settling Defendant hereby agrees not to oppose entry of this Consent
18 Decree by this Court or to challenge any provision of this Consent Decree, unless the
19 United States has notified Settling Defendants in writing that it no longer supports entry of
20 the Consent Decree.

21 35. Each Settling Defendant shall identify, on the attached signature page, the
22 name and address of an agent who is authorized to accept service of process by mail on
23 behalf of that Party with respect to all matters arising under or relating to this Consent
24 Decree. Settling Defendants hereby agree to accept service in that manner and to waive
25 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure
26 and any applicable local rules of this Court, including but not limited to, service of a
27 summons. The Parties agree that Settling Defendants need not file an answer to the
28 Complaint in this action unless or until the Court expressly declines to enter this Consent

1 Decree.

2 **XVIII. FINAL JUDGMENT**

3 36. Upon approval and entry of this Consent Decree by the Court, this Consent
4 Decree shall constitute the final judgment between and among the United States and the
5 Settling Defendants. The Court finds that there is no just reason for delay and therefore
6 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

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8 SO ORDERED THIS ____ DAY OF _____, 200__.

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11 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Aervoe Industries, Inc. et al., (N.D. Cal.) relating to the Lorentz Superfund Site.

3 For THE UNITED STATES OF AMERICA

4
5 Date: 12.24.03

6 THOMAS L. SANSONETTI
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11
12 Date: _____

13 MATTHEW A. FOGELSON
14 Trial Attorney
15 Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 301 Howard Street
19 San Francisco, CA 94105

20
21 Date: _____

22 MICHAEL SEMLER
23 Trial Attorney
24 Environmental Defense Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 P.O. Box 23986
28 L'Enfant Plaza Station
Washington, D.C. 20026-3986

KEVIN V. RYAN
United States Attorney
Northern District of California

CHARLES O'CONNOR
Assistant United States Attorney
Northern District of California
450 Golden Gate Ave.
P.O. Box 36055
San Francisco, CA 94102

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Date: _____

KEITH TAKATA
Director, Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Date: _____

ANN C. CHAN
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 For Settling Defendants AERVOE INDUSTRIES, INC., a Nevada corporation, APPLIED
2 TINTING SYSTEMS, INC., a California Corporation, AERVOE PACIFIC COMPANY,
3 a California Corporation, AERVOE PACIFIC COMPANY, a Nevada Corporation,
PACIFIC AEROSOL, INC., a California corporation, and AERVOE CHEMICAL
COMPANY, a California corporation

4 Date: _____
5
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8 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

9 Name: _____
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11 Title: _____
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13 Address: _____
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For Settling Defendants D.A. STUART (f/k/a Stuart-Ironside, Inc) and FAR-BEST CORPORATION

Date: _____

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: _____

Title: _____

Address: _____

1 For Settling Defendants FORD MOTOR COMPANY and FORD ELECTRONICS AND
2 REFRIGERATION, LLC

3 Date: _____
4
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6 Agent Authorized to Accept Service on Behalf of Above-signed Parties:
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8 Name: _____

9 Title: _____
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11 Address: _____
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1 For Settling Defendant GENERAL MILLS, INC.

2 Date: _____

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6 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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Name: _____

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9 Title: _____

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Address: _____

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1 For Settling Defendants GOLDEN GATE PETROLEUM CO., BAY AREA
2 PETROLEUM CO., BAY AREA/DIABLO PETROLEUM CO., BAY AREA
3 HOLDENER PETROLEUM CO., and HOLDENER PETROLEUM CO.

4 Date: _____
5 _____
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7 _____

8 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

9 Name: _____
10 _____

11 Title: _____
12 _____

13 Address: _____
14 _____
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16 _____

1 For Settling Defendants K-M INDUSTRIES HOLDING COMPANY, INC., KELLY-
2 MOORE PAINT COMPANY, INC., PACO TEXTURES CORPORATION and CHEM-
3 GUARD PRODUCTS, INC.

4 Date: _____
5
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7 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

8 Name: _____
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10 Title: _____
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12 Address: _____
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1 For Settling Defendants PENNZOIL-QUAKER STATE COMPANY, PENNZOIL-
2 QUAKER STATE COMPANY dba SOPUS PRODUCTS, and PENNZOIL CO.

3 Date: _____
4
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6 Agent Authorized to Accept Service on Behalf of Above-signed Parties:
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8 Name: _____
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10 Title: _____
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12 Address: _____
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1 For Settling Defendants SALZ LEATHERS, INC., and A.K. SALZ CO.

2 Date: _____
3 _____
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5
6 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

7 Name: _____
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9 Title: _____
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For Settling Defendant SUNSWEET GROWERS INC.

Date: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

1 For Settling Defendants TEXTRON INC., SPENCER-KELLOGG, a division of Textron
2 Inc., and KELLY-PICKERING CHEMICAL CORPORATION

3 Date: _____
4
5

6 Agent Authorized to Accept Service on Behalf of Above-signed Parties:
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8 Name: _____

9 Title: _____
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11 Address: _____
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